

REMARKS

Claims 18-23, 26-30, 36-40 and 42-43 remain in this application, with Claims 38-43 renumbered to correct a numbering error, consistent with the numbering already adopted by the Examiner. Claim 41 has been cancelled, without prejudice. Claims 18-20, 22-23, 26-27, 30, 36-37, 39 and 43 have been amended. By these amendments, no new matter has been added.

Certain of the amended claims have been amended to remove limitations, and to more particularly point out the invention with respect to filtering of heated air to remove microscopic organisms. Some of the dependent claims have been amended merely to conform to changes to their respective base claims. Many of the amendments are not narrowing in nature, and many are broadening in certain respects believed not pertinent to patentability of the invention.

The Declaration of Michael Geyer, and the Declaration of Dr. Michael Linford are submitted herewith. These declarations are submitted to rebut the pending rejections under 35 U.S.C. § 103(a) in view of Forbes and Montellano. The declarations present compelling objective evidence to show that the proposed combination would not have been obvious to one of ordinary skill, demonstrating, among other things: long-felt but unmet need, unexpected results, non-obvious nature of the problem solved by the invention, and recognition of others. In addition, the Declaration of Dr. Linford examines the significance of the cited references and concludes that it would not have been obvious to combine the references, and further, the references cannot be combined so as to result in the invention.

The Examiner rejected Claims 18-23, 26-30 and 36-43 under the judicially-created doctrine of obviousness-type double patenting. This rejection is respectfully traversed. As noted in a prior response, the terminal disclaimer already submitted in this case is believed to be effective, and this rejection should therefore be withdrawn. However, if these rejections should become the sole bar to allowance of the case, Applicants will submit a second terminal disclaimer to overcome the pending

nonstatutory double patenting rejection, in a timely fashion.

The Examiner rejected Claim 41 as indefinite, as failing to meet the written description requirement. Claim 41 has been cancelled without prejudice, and this rejection is therefore moot. Applicants note that except for Claim 40, the claims should generally be construed so as to encompass any use of a heated gas in the claimed fashion, either literally, or under the doctrine of equivalents, regardless of where the gas is heated.

The Examiner rejected Claims 18-23, 26-30 and 36-43 under 35 U.S.C. § 103(a) as unpatentable over Forbes and Montellano. These rejections are respectfully traversed. Forbes poses no bar to patentability of Claims 20-23, 26-30, 36-40 or 42-43. Claim 41 has been cancelled, and so the rejection of this claim is moot. Independent Claims 18, 20, and 26 have been revised so as to define filtering of heated gas during heat treatment, among other things. Claim 26 further defines filtration to remove microorganisms. Claims 19 and 22, which depend from Claims 18 and 20, respectively, further define HEPA filtration.

Forbes discloses killing termites and other insects by insulating a structure, and heating the air inside to an elevated temperature as necessary to heat the wood of the structure to around 120° F, thereby killing the termites. As acknowledged by the Examiner, Forbes fails to disclose or to suggest the extraction of dead organisms from the treated structure, and would simply leave the dead organisms (i.e., termites) in place. More to the point, Forbes fails to disclose or suggest the step of filtering the heated interior air or other gas to remove microscopic particles such as mold spores and bacteria. Forbes is not concerned with any type of filtration, much less filtration of remove microscopic particles, at all.

The Examiner has proposed the combination with Montellano, to make up for the deficiencies of Forbes with respect to the extraction of killed organisms. However, Montellano concerns the extraction of macroscopic flying insects only. Like Forbes, Montellano fails to disclose or suggest filtering to remove microorganisms and other

microscopic particles.

In addition, one of ordinary skill would not have had any motivation to combine the antiquated vacuum/macro-filtration method of Montellano with the heat-treatment method of Forbes. Dr. Michael Linford, who is well acquainted with the method of Forbes, has provided testimony to this effect. (Linford, ¶ 11-12; see also ¶ 5-8, explaining Dr. Linford's long familiarity with the Forbes method.) Moreover, even if the references were to be combined, the claimed micro-filtration would still not result. (Linford, ¶ 12.)

Furthermore, Applicants have submitted compelling objective evidence to show that it would not have been obvious to combine Forbes and Montellano, or to otherwise modify Forbes so as to provide filtration during heating. In the following section, various objective criteria demonstrating non-obviousness of the invention are indexed to the Declarations of Dr. Linford and Mr. Geyer, for the Examiner's convenience. The Examiner is referred to the original evidence in the Declarations themselves, which for the sake of brevity will not be repeated here.

Long-felt but Unmet Need: Both Mr. Geyer and Dr. Linford attest to the fact that the Forbes method and micro-filtration were in use for a long overlapping period of time (about ten years, in different fields) before anyone recognized the problem of particulate contamination or suggested the use of filtration as a solution. (Linford, ¶ 5-10; Geyer, ¶ 11-12.)

Nature of the Problem to be Solved: Both Mr. Geyer and Dr. Linford attest to the fact that the nature of the problem solved by the invention – i.e., removal of microscopic allergens and other contaminants – is such that one of ordinary skill in the art of pest control would not have recognized the problem or an effective solution. (Linford, ¶ 8-10; Geyer, ¶ 12-14.)

Surprising Results: Both Mr. Geyer and Dr. Linford attest to the fact that the benefits of the invention, which include a dramatic reduction in particulate contamination compared to unfiltered methods, are both dramatic and surprising. (Linford, ¶ 13; Geyer

¶ 5-9.)

Recognition of Others: Dr. Linford, Mr. Geyer, and trained health professionals have recognized the surprising benefits of the invention. (Linford, ¶ 13 & Ex. A; Geyer ¶ 10, Ex. A)

It should be apparent that Forbes and Montellano pose no bar to patentability of Claims 18, 20, and 26, because of the deficiencies of Forbes and Montellano, and in view of the objective evidence of non-obviousness submitted herewith. The remaining claims are also allowable, at least as depending from allowable base claims.

In view of the foregoing, the Applicants respectfully submit that Claims 18-23, 26-30, 36-40 and 41-42 are in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested, and a timely Notice of Allowability is solicited. If it would be helpful to placing this application in condition for allowance, the Applicants encourage the Examiner to contact the undersigned counsel and conduct a telephonic interview.

Serial No. 10/014,727
February 22, 2005
Page 11

To the extent necessary, Applicants petition the Commissioner for a two-month extension of time, extending to February 22, 2005, the period for response to the Office Action dated September 21, 2004. A check in the amount of \$225.00 is enclosed for the two-month extension of time pursuant to 37 CFR §1.17(a)(2) and \$395.00 for request for continued examination (RCE) pursuant to 37 CFR § 1.17(e). The Commissioner is authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0639.

Respectfully submitted,



Brian M. Berliner
Attorney for Applicants
Registration No. 34,549

Date: February 22, 2005

O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071-2899
Telephone: (213) 430-6000

Enclosures: Declaration of Dr. Michael Linford w/ Ex. A
Declaration of Michael Geyer w/ Ex. A